

## HOUSE BILL NO. 359

INTRODUCED BY P. CLARK, NEWMAN, EGGERS

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE COLLECTION OF DNA EVIDENCE TO ~~ALL~~  
CERTAIN ADULT FELONY OFFENSES; DEFINING "FELONY OFFENSE"; AND AMENDING SECTIONS  
44-6-101, 44-6-102, 44-6-103, AND 44-6-107, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 44-6-101, MCA, is amended to read:

**"44-6-101. Definitions.** As used in this part, the following definitions apply:

(1) "Biological sample" means cheek cells removed by using a buccal swab of a type authorized  
by the department or a vial or other container of blood.

(2) "Department" means the department of justice provided for in 2-15-2001.

(3) "DNA" means deoxyribonucleic acid.

(4) "DNA identification index" means the DNA identification record system established under  
44-6-102.

(5) "DNA record" means DNA identification information stored in the DNA identification index for  
purposes of establishing identification in connection with law enforcement investigations or supporting  
statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form  
of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths,  
autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

(6) "DNA testing" means DNA analysis of materials derived from the human body for the purposes  
of identification consistent with this part.

~~(7) "Felony offense" has the meaning provided for a felony in 45-2-101~~ MEANS ANY OFFENSE UNDER  
TITLE 45, CHAPTER 5 OR CHAPTER 9, FOR WHICH THE MAXIMUM POTENTIAL SENTENCE UNDER STATUTE IS DEATH OR  
IMPRISONMENT IN A STATE PRISON FOR A TERM EXCEEDING 1 YEAR OR BURGLARY OR AGGRAVATED BURGLARY UNDER  
45-6-204.

~~(7)~~(8) "Forensic DNA laboratory" means any laboratory operated by state government that  
performs DNA analysis on materials derived from the human body for use as evidence in a criminal

proceeding or for purposes of identification.

~~(8)(9)~~ "Marker" means a method of describing individuals by genetic profile, such as blood or DNA type, and has the specific meaning given to the word by department rule, which must take into account the meaning generally given to the word for forensic typing by DNA technologists.

~~(9) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.~~

~~(10) "Violent offense" has the meaning contained in 46-23-502.~~

(10) "SEXUAL OFFENSE" MEANS THE OFFENSES CONTAINED IN THE DEFINITION OF THAT TERM IN 46-23-502.

(11) "VIOLENT OFFENSE" HAS THE MEANING CONTAINED IN 46-23-502."

**Section 2.** Section 44-6-102, MCA, is amended to read:

**"44-6-102. Establishment of DNA identification index.** (1) The department shall establish a computerized DNA identification index for the receipt, storage, and exchange of DNA records. The DNA identification index is the central repository for DNA records in the state of Montana.

(2) The DNA identification index must include:

(a) DNA records for an individual convicted of, a felony offense or a youth found under 41-5-1502 to have committed, ~~a sexual offense or violent~~ an offense that if committed by an adult would be considered a felony A SEXUAL OR VIOLENT offense;

(b) DNA records for a person upon order of a sentencing judge under 46-18-202; and

(c) analyses of DNA samples recovered from crime scenes, medical examinations, and unidentified human remains. For purposes of identification of missing persons, the DNA identification index may include DNA records of close biological relatives of a missing person.

(3) The DNA identification index and the DNA testing done by a forensic DNA laboratory must be compatible with the systems of DNA identification used by other criminal justice agencies or private testing laboratories to the extent necessary to permit the exchange of DNA information.

(4) The DNA records collected and stored in the DNA identification index may contain only information relating to the identification of individuals. Information that identifies a person that is the subject of a record must be limited to the information that is necessary to pursue criminal investigations and to support statistical interpretation of results.

(5) The DNA identification index may be used:

(a) by law enforcement agencies for purposes of identification in the course of criminal

1 investigations and proceedings;  
2 (b) to assist in the identification of human remains, including identification of missing persons; and  
3 (c) if information allowing a person to be identified is removed, for a population statistics database  
4 and for identification, research, and protocol development for forensic DNA analysis and quality control."  
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6 **Section 3.** Section 44-6-103, MCA, is amended to read:

7 **"44-6-103. Collection of samples and maintenance of data.** (1) Following entry of judgment, a  
8 person convicted of ~~a sexual offense or violent~~ a felony offense, a youth found under 41-5-1502 to have  
9 committed ~~a sexual offense or violent~~ an A SEXUAL OR VIOLENT offense ~~that if committed by an adult would~~  
10 ~~be considered a felony offense~~, or a defendant ordered under 46-18-202 to provide a biological sample  
11 for DNA testing shall provide a biological sample for DNA analysis to determine identification  
12 characteristics specific to the person. The sample must be provided to the department of corrections if the  
13 person is incarcerated in a facility administered by the department of corrections. If the person is not  
14 incarcerated in a facility administered by the department of corrections, the sample must be provided to  
15 a person or entity designated by the county sheriff.

16 (2) The biological sample must be collected, stored, and sent by the department of corrections  
17 or the person or entity designated by the county sheriff under subsection (1) to the department for entry  
18 in the DNA identification index in accordance with rules adopted by the department with the advice of the  
19 department of public health and human services.

20 (3) THE OFFENDER IS RESPONSIBLE, IF ABLE TO PAY, FOR THE COST OF THE COLLECTION OF THE SAMPLE. THE  
21 FEES CHARGED FOR THE COLLECTION MAY NOT EXCEED THE ACTUAL COSTS OF COLLECTION.

22 ~~(3)~~(4) The forensic DNA laboratory may perform DNA analysis only for those markers that have  
23 value for law enforcement identification purposes.

24 ~~(4)~~(5) The knowing refusal or failure to provide a biological sample under this part is grounds for  
25 revocation of a suspended or deferred imposition of sentence."  
26

27 **Section 4.** Section 44-6-107, MCA, is amended to read:

28 **"44-6-107. Expungement of DNA records.** If a conviction of ~~a sexual or violent~~ a felony offense  
29 or the adjudication of a youth for an offense that would be a felony offense if committed by an adult A  
30 SEXUAL OR VIOLENT OFFENSE is reversed, the record relating to the offense must be expunged from the DNA

1 identification index. The county attorney of the county in which the conviction occurred shall notify the  
2 department of a reversal of a conviction for ~~a sexual or violent~~ the offense or adjudication."  
3 - END -